

90. The Lewis statement relates that the School District began experiencing a problem with its radios in January of 1992. A company identified in the statement as Hyster²³ was frequently heard on the channel. Motorola, with whom the School District had its repeater service, appeared unable to solve the problem. When Mr. Don Kirk of Newport Radio called on Lewis to sell him some radios, Lewis asked Kirk to look into the problem. Exhibit RL-1 at 1. Kirk investigated and reported back that Hyster appeared to be validly operating on a repeater licensed on the same channel more than 70 miles away, but was overriding the signal of the Motorola repeater the School District was on because it was operating at higher power. *Id.* at 1-2. Lewis was unsuccessful in getting Motorola to solve the problem, so he asked Kirk for further assistance. Kirk then enlisted Kay's assistance. *Id.* at 2. The solution eventually worked out between Lewis, Kirk, and Kay was to have the School District's service transferred from the Motorola community repeater to an SMR station to be owned and operated by Kay at nearby Santiago Peak. *Id.*

91. By including these facts in the Lewis statement, a declaration prepared for and in connection with the Kay license revocation proceedings, Hollingsworth is attempting to suggest that the problem the School District experienced with Hyster was deliberate and malicious interference and that Kay was somehow responsible.²⁴ Moreover, the statement implies that Lewis believed as much and reported this to the Commission. But these are false impressions, for Lewis testified as follows regarding the alleged interference:

Q. So you actually did hear the interference that you have discussed with us, correct?

A. Yes.

²³ The company in question is Hyster Lift, a forklift company.

²⁴ The Bureau specifically identified Lewis as one with "knowledge of instances of deliberate and/or malicious interference" by Kay. *See* footnote 20, *supra*.

Q. Did you come to know what the reasons for it were at some point in time?

A. Yes.

Q. What were those reasons?

A. We were told by another individual that there was a -- our frequency had been within only a 75-mile radius

Q. So he didn't lead you to believe, then, that the additional users on the same channel that the school district was on were there unlawfully?

A. No, he did not.

Exhibit RL-3, Transcript at 18-19. The so-called interference that the School District experienced in January of 1992 was actually nothing more than activity on the same channel generated by a legitimate user of a validly licensed repeater located more than 70 miles from the repeater serving the School District, but at greater power. *Id.* at 16-17. Hollingsworth, as a management-level official in the FCC office that issues these licenses, had constructive notice of this fact. He also must have had actual knowledge of it based on his telephone conversations and interview with Lewis. Hollingsworth nonetheless drafted a sworn statement suggesting that the Hyster incident was deliberate interference by Kay, and Hollingsworth himself thereafter swore, under oath, that Lewis had actual knowledge of deliberate interference by Kay.

92. The Lewis statement then has the following passage:

... I got a call from James Kay who said the same things Kirk had told us and said he could take care of the problem. Mr. Kay said that he and Don Kirk owned a repeater we could use but that we would have to change our license to switch from Majeska Peak to his peak. Don Kirk then set it up so we would use their repeater for one year.

The paperwork for the service was handled by a woman named Agnes Pennington. I signed the repeater agreement and later got a new license in the mail. I didn't look at it at the time, but merely put it in the file without noticing it had been changed from a GP (special emergency) to a GB (conventional business) license. I know that when I signed up for the new repeater service I never intended to change the FCC license, and I never authorized Ms. Pennington or Don Kirk to make the change. I did

sign the application that switched us from a licensee to end user, but I didn't realize the consequences of what I had signed. I only intended to move the repeater service from one peak to another to clear up the interference problem, and Don Kirk told me that it wouldn't affect the license.

Exhibit RL-1 at 2. Hollingsworth had Lewis state, under oath, that Kay was responsible for (a) changing the School District's license from a GP to a GB without Lewis's knowledge, and (b) improperly converting the School District's license to an end user authorization. If Hollingsworth did not know that both assertions were entirely false, he is unconscionably incompetent.

93. Agnes Pennington is not a Kay employee or agent. Rather, she is an independent application preparation consultant who handled the School District's licensing before Kay became involved. Kay has never relied on Pennington to obtain agreements or applications on his behalf. If Hollingsworth had simply contacted Pennington, he would have learned this. Kay did not become involved with Lewis or the School District until 1992, after the School District began to hear Hyster on the channel. The change of the license from a GP to a GB occurred before that, apparently in 1991. Exhibit RL-4 is a copy of the School District authorization issued on May 26, 1987. This appears to have been issued a "GP" or Public Safety / Special Emergency Radio Service authorization. Exhibit RL-5 is a series of documents showing that, in August of 1991, Pennington prepared a modification application on behalf of the School District. As indicated in those documents, Pennington prepared the application as a GP (Public Safety / Special Emergency), but submitted it for frequency coordination to NABER (The National Association of Business and Educational Radio). NABER was not the appropriate frequency coordinator for GP applications. Apparently NABER changed the "GP" to a "GB" before tendering the application to the FCC. The Commission issued the modified authorization as a GB. Exhibit RL-6 is a copy of the modified authorization, bearing the GB indicator. It was issued on November 13, 1991, well before Kay first became involved with the School District. The

distinction between "GP" and "GB" would have been of little practical consequence to the School District. Moreover, while Pennington appears to have erred by sending a GP application to NABER, the resulting correction to GB was ironically proper because under applicable regulations the School District was not eligible in the Public Safety or Special Emergency Radio Services.

94. Clearly, Kay was not responsible for changing the authorization from a GP to a GB. This occurred before Kay's involvement, and this was information in the Commission's files that could have been easily determined by Hollingsworth. Had this been a matter of concern to Lewis, which he had raised in a complaint to the Commission accusing Kay of having improperly made this change, Hollingsworth's failure to ascertain the truth would be merely negligent. But Lewis did *not* initiate a complaint or raise a concern. In fact, he did not even know or understand anything about this matter, or have any concern about it, until coached by Hollingsworth to implicate Kay. Consider the following excerpts from Lewis's deposition testimony:

Q. On page 2, paragraph 2 [of the Lewis Witness Statement] it indicates that you put it in the file without noticing that it had been changed from a GP, special emergency license, to a GB, conventional business license. Where did you get that particular piece of information?

A. That was during the conversation with Mr. Hollingsworth.

Q. Did he ever show you any documents to substantiate the fact that it had been a GP, as in Paul, license?

A. Not to my recollection.

Exhibit RL-3, Transcript at 39-40. The deposition transcript also reveals that Lewis did not then, and does not now, even understand the change or its significance. *Id.* at 55-55. In fact, Lewis does not even know whether or not the School District ever had a GP license:

Q. What we're seeking is any information you have as to whether or not the a GP license was ever held by the school district.

A. I don't -- I don't know.

Q. Did you rely upon the information given to you by the FCC, then, in making this statement about the change from GP to the GB?

A. Yes.

Id. at 57.

95. Hollingsworth knew or could easily have determined that the conversion of the School District's license from a GP to a GB had nothing whatsoever to do with Kay, and in fact occurred before Kay even became involved with the School District. He nonetheless suborned from Lewis (a man who was not theretofore aware of the change and had no understanding of its significance) an under oath accusation that Kay had improperly engineered the change without his knowledge. So anxious to smear Kay is Hollingsworth that he has Lewis accusing Kay of (a) something Kay clearly did not do, and (b) something that, in any event, would have been entirely proper if Kay had done it, namely, correcting an improperly issued GP authorization to the proper GB category.

96. A similar pattern emerges regarding the suggestion that Kay acted improperly in converting the School District's license from a community repeater to an end user license.

Consider the following:

Q. [reading from the Lewis Witness Statement]: "I did sign the application that switched us from a licensee to an end user, but I didn't realize the consequences of what I had signed." My question here is: What are the consequences you were concerned about at the time you made this statement?

A. What I -- with discussions with the FCC, what was brought to my attention was that the license that we originally had with them. We were a licensee originally and with the license, it was changed to sign over from Modjeska to Santiago. We became an end user at that time.

Q. Was there someone that told you that that was a bad thing that had happened?

A. I don't remember.

Q. Did someone come to you and indicate that you had been in some way snookered out of a license that was very important or valuable?

A. Yes, that was the discussion with the FCC.

Q. Can you recall who it was at the FCC that said that?

A. No, I cannot.

Q. Let me ask you this question. Are you sure it was a conversation that you had with someone at an FCC location?

A. Yes.

Q. How is that?

A. It was -- when I went up to -- met with them at Cerritos.

Id. at p. 50-51.

97. Once again we see that Lewis had no information, knowledge, or even belief of any wrongdoing by Kay, but was rather coached by Hollingsworth to implicate Kay. Hollingsworth was almost certainly the one who fed Lewis the information at the Cerritos meeting, and Hollingsworth later prepared the sworn statement for Lewis. But Hollingsworth knew full well that Kay's conduct was not only proper, it was in fact required by FCC regulation. The School District held a community repeater authorization for Modjeska Peak. Because Motorola, who operated the repeater, was unable or unwilling to resolve the service problems, the School District sought out another solution. Kay was willing to provide them with SMR service from nearby Santiago Peak. But this meant two things under then-applicable FCC regulations: (1) the School District would not be permitted to maintain its Modjeska Peak

authorization because it was discontinuing operations from that site, and (2) the School District would require an end user license in order to legally receive service via Kay's Santiago SMR. Kay therefore did the logical and entirely appropriate thing--he prepared an application to convert the School District's community repeater license to an end user authorization. Exhibit RL-7 is a copy of Kay's February 17, 1992 letter transmitting the completed application to Lewis for his review and signature. A copy of the completed FCC Form 574 as executed by Lewis is also included. It will be noted that Kay advised Lewis to "make a photocopy of the application and keep the copy for your records," Exhibit RL-7 at 1, something he surely would not have done had he been attempting to improperly convert the authorization in some way. The application form is clearly marked "GB" at Item 20 (Radio Service), and it clearly states "CONVERT TO END USER" as one of the purposes of the application. *Id.* at 2.

98. Contrary to the impression given in the Hollingsworth-prepared written statement, Lewis does not believe he was wronged by Kay:

Q. Do you ... believe that Mr. Kay did anything wrong, improper or unethical in his business dealings with you? ...

A. No.

Exhibit RL-3, Transcript at 56-57. Nevertheless, Hollingsworth told Lewis that Kay had improperly converted the School District authorization from a GP to a GB and from a community repeater license to an end user authorization, information Hollingsworth knew to be patently false. Hollingsworth then prepared a written statement containing the inaccurate information and solicited Lewis's under-oath signature on the statement. Such reprehensible conduct by one who is ostensibly charged with protecting the public interest can not be tolerated.

V. CONCLUSION

99. Since 1994 Sobel has suffered the Bureau's mistreatment of him. No explanation was given for the freeze on processing Sobel's applications. Sobel's inquiries about this were ignored. The Bureau (and the Commission) then erroneously included Sobel's call signs in the Kay designation order. The Bureau corrected this order only when it suited the Bureau's own litigation strategy against Kay. The freeze on Sobel's pending matters continued, and the Bureau stubbornly ignored Sobel's continuous attempts to learn what concerns justified this inaction and to resolve them. Out of frustration, Sobel sought judicial relief from the Bureau's unlawful inaction. The Bureau's vindictive response to that was the adoption of license revocation proceedings in blatant violation of the Administrative Procedure Act. When the inadequacy of the charges to support revocation were exposed, the Bureau feigned a sudden outrage at Sobel's alleged lack of candor in a then more than two-year old document.

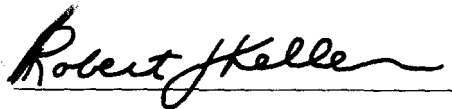
100. In the midst of all this, Sobel's competitors are given special treatment by the Bureau. Their applications are processed and granted when they should not be. Their canceled authorizations are unlawfully reinstated. Conclusively proven wrongdoing by them is utterly ignored. In short, a discriminatory double standard is applied whereby Sobel always comes out on the short end of the stick.

101. This was at one time all very perplexing and Sobel was at a loss to explain it. But now it is all very clear. This is not a matter of mere regulatory lethargy, nor is it mere coincidence or even incompetence. It is by design born of bad faith and ill will. What is now clear to Sobel is the motive for his mistreatment at the hands of the Bureau. It is really quite simple, Sobel has been singled out for harassment, harsh treatment, and blatant discrimination by the Bureau for no other reason than his friendship and business association with Kay. There is

WHEREFORE, it is respectfully requested that the Commission to conduct an investigation, pursuant to Section 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 403, into the facts and circumstances surrounding the designation and prosecution of the captioned proceeding; that Sobel be made a party to the investigation and afforded full discovery rights; and that, upon conclusion of the investigation, the Commission make findings and fashion appropriate relief.

Respectfully submitted this 27th day of February, 1998,

MARC D. SOBEL d/b/a AIR WAVE COMMUNICATIONS

A handwritten signature in cursive script, reading "Robert J. Keller", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel for Marc D. Sobel d/b/a Air Wave Communications, hereby certify that on this 27th day of February, 1998, I caused copies of the foregoing *REQUEST FOR INQUIRY AND INVESTIGATION* to be hand delivered, except as otherwise indicated below, to the officials and parties in WT Docket No. 97-56, as follows:

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